72-1611 FILE COPY

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MAY 31 1973

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1972

No _____

72-1611

STANLEY V. TUCKER,
Petitioner

-v-

JEAN NEAL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

STANLEY V. TUCKER
Petitioner
963 Capitol Ave.
Hartford, Conn 06106
203 232-0282

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IN THE

SUPREME COURT TO THE UNITED STATES

October Term 1972

No _____

STANLEY V. TUCKER,

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JEAN NEAL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CKT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered March 27, 1973 infra Appendix A 1 .

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for then Ninth Circuit is printed in the Appendix hereto, infra A 1, the Opinion of the District Court, Northern District of California, October 20, 1972, is printed in Appendix A 1.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered March 27, 1973. The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTIONS PRESENTED

1. Where Appellant timely filed a Motion under Rule 60b and where the Ninth C. A. granted a motion to dismiss without ruling on Appellant's Rule 60B motion was Appellant denied a a fair hearing and due process under the Rule in Klapprott v U. S. 335 U.S 615.

2. Where Appellant timely filed a Notice of Appeal and timely prepared and paid for and filed the Record on Appeal and timely prepared and filed his APPELLANT's BRIEF and where Appellee waived the right to file a Brief was Appellant denied due process and equal protection of the laws by the Ninth C. A. dismissing his appeal without ruling on the merits.

3. Did the Ninth C. A. err in dismissing Appellant's Appeal without any record as to the vital issue of "excusable Neglect".

4. Where Appellant timely prepared and filed an Application For Extension of Time To File Notice of Appeal complete with allegations setting forth excusable neglect did the District Court err in denial of Appellant's Application without a finding on the vital issue of "excusable neglect".

5. Where Appellant appeared Pro Se in both District Court and in the Ninth C. A. was Appellant denied the minimum federal standard of justice as pronounced in Pickering v Penn, 151 F 2d 240.

6. Where substantial federal questions were at issue: namely the constitutionality of California's newly enacted long arm statute should the Ninth C. A. have denied the Motion To Dismiss and Proceeded with the appeal on its merits.

CONSTITUTIONAL AND STATUTORY PROVISIONS

---

1. This case involves a denial of due process and equal protection of the laws under the 5th and 14th Amendments to the U. S. Constitution.

2. This case involves the vital issue of "excusable neglect" as applicable to a Rule 4b motion to extend time to file a notice of appeal.

3. This case involves the First Amendment freedom of Fathers to travel across state lines to visit their minor children residing in other states and to freely communicate by mail and to seek redress of grievances to Father and/or children by resort to the courts of the state where the children reside without the state exerting a chilling affect on the federally protected First Amendment freedom by an unconstitutional long arm statute.

4. This case involves the unconstitutionality of California's newly enacted long arm statutes CCP 410.10 and CCP 415.40.

5. This case involves Rule 60b FRCP and the denial of due process and equal protection by failure to rule on Appellant's Rule 60b motion.

STATMENT OF THE CASE

This action challenged the constitutionality of California's newly enacted long arm statutes CCP 410.10 and CCP 415.40 on grounds that said statutes permitted jurisdiction to vest where fundamental federally protected First AMendment freedoms were at stake and where Appellant had no "minimum activities" in California..

Notwithstanding Appellant's constitutional challenges timely made and properly made under the Civil Right jurisdictional statutes 28 USC 1343 and 42 USC 1983 the district court entered summary judgment adverse to Appellant.

The order in the district court is believed to have been made without knowledge or in advance of publication of the order of the UNITED STATES SUPREME COURT in LYNCH v HOUSEHOLD FINANCE 405 U. S. 538. Thus the District Court clearly acted on the premise that the civil rights jurisdictional rights statutes did not apply where property rights such as Appellant sought to vindicate were at stake. Nevertheless, the opinion by the UNITED STATES SUPREME COURT in Lynch, supra, shattered this illusion. Reexamined in light of Lynch, supra, the District Court was clearly wrong and the orders and judgments below should be vacated and reversed.

Appellant, victim of approx 40 civil and or criminal prosecutions brought maliciously in California as a result of a dirorce oriented situation, almost all of whom were dismissed,

had his minor son visiting Connecticut during the summer of 1972 and seeking medical aid for his neglected son and seeking to enroll his son in college across state lines failed to file the notice of appeal within the 30 days but timely prepared and mailed his notice of appeal along with application pursuant to Rule 4 to extend time to file notice of appeal.

Without making a ruling on the vital issue of "excusable neglect" the District Court summarilly denied the application to extend time.

Appellant timely prepared and perfected his appeal and timely prepared and filed his record on appeal and timely ppepared and filed his Appellant's Brief and Appellee filed a waiver of Appellee's Brief.

Thereupon Appellee disregarding that the District Court failed to make a ruling on the vital issue of "excusable neglect" filed a motion to dismiss and Appellant filed a Rule 60b motion based on mishandling of his notice of appeal and application for extension of time to file notice of appeal based on mishandling of said papers by the district court clerk and/or postal authorities so that said papers were mailed or routed across the nation three times travelling approx 9,000 miles before they were lodged with the district court clerk in San Francisco.

The Ninth C A summarilly dismissed the appeal by Appellant without ruling on the merits and without ruling on Appellant's Rule 60 B. motion and thus Appellant contends he was denied due process of law and equal protection of the laws.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH U. S. SUPREME COURT DECISIONS.

The primary thrust of this petition is directed toward the argument that he was denied a fair trial in the Ninth C. A. and in the District Court by granting the motion to dismiss WITHOUT RULING on Appellant's Rule 60b motion. There is no doubt but that Rule 60b was applicable under the facts herein.

Local Rule 5 - Ninth C. A. "The Federal Rules of Civil Procedure whenever relevant are adopted as part of the rules of this court."

The ruling in the Ninth C. A. denied Appellant due process and equal protection of the laws because it was contrary to decisions of the United States Supreme Ct.

For example in Klapprott v U. S. 335 U S 615 the U. S. SUPREME COURT held the power of Rule 60b permitted a default judgment to be set aside nine years later when there was a denial of a fair hearing.

Klapprott supra P 615 : "Fair hearings are in accord with elemental concepts of justice and the language of the "other reason" clause of 60b is broad enough to authorize the court to set aside the default judgment and grant Petitioner a fair hearing."

II. THE DISMISSAL IN THE DISTRICT COURT OF APPELLANT's CONSTITUTIONAL CHALLENGE TO THE NEWLY ENACTED "LONG ARM" STATUTES OF CALIFORNIA CONFLICTS WITH LYNCH.

Appellant contends that the granting of summary judgment by District Judge Alfonso J. Zirpoli is INEXCUSABLE ERROR on July 21, 1972 in light of the U. S. SUPRME COURT decision on March 23, 1972

YNCH v HOUSEHOLD FINANCE 405 US 538, printed in the March 21, 1972 issue of U. S. Law Week 40 LW 4335.

Lynch at P 542: "This Court has never adopted the distinction between personal and property rights as a guide to the contours of 1343(3) jurisdiction. Today we expressly reject that distinction."

If Judge Zirpoli made his decision in this action on July 21, 1972 "in the dark" as to the import of Lynch, supra, then he was probably the only federal judge in the U. S. who was not cognizant of the breadth and power of the due process clause of the U. S. Constitution and the Amendments thereto and of the jurisdictional power of Title 28 USC 1343 to adjudicate the due process claims of Appellant herein, namely that he had been assaulted in his property civil rights in a state court proceeding and was entitled to an opportunity to defend such rights in federal courts with proper notice of hearing.

Surely Judge Zirpoli OUGHT TO HAVE TAKEN NOTE that in state after state prejudgment statutes were falling as unconstitutional in light of Snaidach v Family Finance 395 US 337 and Lynch, supra.

Even California's pre-judgment attachment statute was not immune, CCP 537, was in 1971 declared unconstitutional in light of Snaidach, supra, see Randone v Appellate District of Sup. Ct of Sacramento 96 Cal Rpt 709, 488 P 2d 13.

If there was ever any room for doubt on the part of Judge Zirpoli in light of matters set forth above that doubt was permanently laid to rest in Fuentes v Shevlin 92 C S. Ct 1983, June 12, 1972.

Fuentes P 1986; "A stove, stereo, table, bed and other household goods for which buyers had contracted and paid substantial sums were with in protection of procedural due process of law, whether or not they were absolute necessities of life."

USCA AMENDMENT 14.

While it is possible Judge Zirpoli was ignorant of the latest decisions yet the timing where he granted summary judgment herein July 21, 1972 CONTRARY TO DECISIONS OF THE U. S. SUPREME COURT on March 21, 1972 in Lynch, supra, and CONTRARY to the DECISION OF THE U. S. SUPREME COURT on June 12, 1972 in Fuentes, supra, clearly indicate the orders and/or judgments below must be reversed in the interests of justice.

III. THERE IS A LINE OF DECISIONS IN THE FEDERAL COURTS THAT HOLD APPELLANT's APPEAL WAS TIMELY

In this action Appellant was subject to granting of a summary judgment in violation of his due process and equal protection rights. While the notice of appeal was not filed in 30 days nevertheless within the time allowed by the rules on Sept 13, 1972 Appellant filed by mail his notice of appeal and his application based upon good cause and "excusable neglect" for extension of time to file notice of appeal.

Under the rules Appellant's mailing was timely since Appellant had until October 19, 1972 to obtain an order to extend time. Nevertheless, the papers inadvertently mailed to the District Court Clerk in Los Angeles were not filed nor file stamped but mailed back to Hartford Conn. and re-mailed to San Francisco. In San Francisco on October 20, 1972 Judge Zirpoli denied the application.

In a leading case factually similar, Yanow v Weyerhoaeuser Stamship Co 274 F 2d 274 , it was held p 275:

> "An attempted appeal may be held effective and timely notwithstanding the papers filed are given the wrong name, do not use the word "appeal" are filed in the wrong court, or othersise fail strictly to conform to the rules."

Through inadvertence, excusable neglect, mishandling by Los Angeles District Clerk and re-mailing across country over 9,000 miles before being lodged in San Francisco District Court it may be Appellant's papers "may fail to strictly conform to the rules"..... yet under the de-

cision in Yanow, supra, Appellant's appeal.....

was "effective and timely"

The dismissal of Appellant's appeal by the Ninth C. A. on March 23, 1973 was based on "lack of jurisdiction" and this decision was clearly wrong.

Yanow supra P 274: "the expiration of the term has no bearing on the power of the Appellate Court to act upon motions to dismiss appeal on the ground it was not taken within the time allowed by the rules.

FRCP Rule 60b
9th C. A. Local Rule 5

IV. THERE IS A LINE OF FEDERAL DECISIONS THAT HOLD UNDER THE FACTS OF THIS CASE THAT LATE FILING OF NOTICE OF APPEAL IS "QUASI-JURISDICTIONAL"

See Noble v Union River Logging R. Co 147 US 165, 173:

"There is another set of facts which are quasi-jurisdictional"

American National Bank v Taussig 7 Cir 255 F ed 765

Patapoff v Vollstedts Inc 267 F2d863

See Yanow P 282: "There is a considerable body of authority indicating that in determining whether an attempted appeal has been accomplished

most informally drawn papers and improperly labeled documents have been held sufficient to accomplish the apparent objective of taking an appeal"

See: Fraser v Doing, 76 U.S App DC 111

V. IN THIS ACTION APPELLEE WAIVED NOTICE OF APPEAL BY WAIVING RIGHT TO FILE APPELLEES BRIEF.

On March 14, 1973 after Appellant filed his Brief on the merits the Appellee filed a letter , Appendix A2, wherein Appellee stated....

"Appellee declines to file an Answering Brief...."

Yanow, supra P 282:

> Thus a petition for rehearing has been held equivalent to a motion for new trial. Fraser v. Doing, 76 U.S. App.D.C. 111, 130 F.2d 617; The Astorian, 9 Cir., 57 F.2d 85, 87; a waiver of notice of appeal by the appellee, when filed, has been held an acceptable substitute for a regular notice of appeal, Crump v. Hill, 5 Cir., 104 F.2d 36; [10] a petition for mandamus was accepted as a sufficient notice of appeal notwithstanding it was filed in the appellate rather than the district court. Jordan v. United States District Court, 98 U.S. App.D.C. 160, 233 F.2d 362, 365; [11] an application made in the court of appeals for leave to appeal in forma pauperis has been held "an unequivocal notification of intention to appeal and therefore a 'notice of appeal' sufficient to give this court jurisdiction."

Yanow, P282 continued:

> Blunt v. United States, 100 U.S.App.D.C. 266, 244 F.2d 355, 359. See in accord Burdix v. United States, 9 Cir., 231 F.2d 893, 894; Roth v. Bird, 5 Cir., 239 F.2d 257.[12] Our decision in Mondakota Gas Co. v. Montana-Dakota Utilities Co., 194 F.2d 705, 706, is out of line with those cases, but it was expressly disapproved in Parissi v. Telechron, Inc., 349 U.S. 46, 47, 75 S.Ct. 577, 99 L.Ed. 678. More in line with the presently prevailing view is Cutting v. Bullerdick, 9 Cir., 178 F.2d 774, 775.[13]

Thus there is considerable authority as set forth above that the Appellee waived the notice of appeal in respect to timeliness by waiving the right to file Answering Brief on March 14, 1973 and thus the ruling in the Ninth C. A. on March 27, 1973 dismissing Appellant's appeal was contrary to established law and denied Appellant due process and equal protection of the laws.

The order of the ninth C. A. should be summarilly reversed and this action remanded for further pro - ceedings in accordance with the law.

VI. THE DISTRICT COURT SHOULD HAVE DENIED SUMMARY JUDGMENT IN LIGHT OF BUCKLEY V ESQUIRE INC 344 F. SUPP 1133 1972

The District Court erred in granting Summary Judgment since the record shows clearly at issue factually the contention that The Plaintiff's purported state court judgment was not entitled to full faith and credit by reason of denials of due process in state court proceedings.

> "Where it is not clear whether article is libelous article is susceptible to both defamatory and non-defamtoy references, motion for summary judgment should be denied."

Buckley v Esquire inc 344 F Supp 1133

The District Court was obligated to view the facts in the light most favorable to the party opposing the motion for summary judgment..

5th C. A. Times v Rangano 427 F 2d 219

Viewing the record below on the motion for summary judgment many inferences may be drawn favorable to the defendant-appellant and each of these alone is grounds for reversing the order granting summary judgment.

CONCLUSION

This Court should summarily reverse the decision of the Circuit Court of Appeals for the Ninth Circuit, or in the Alternative, probable jurisdiction should be noted.

Respectfully Submitted:

By_____

STANLEY V. TUCKER

APPENDIX - Order of the 9th C. A. Dismissing Appeal March 27, 1973

ORDER

Before : TRASK and CHOY, Circuit Judges.

Appellee's motion to dismiss appeal for lack of jurisdiction is granted and the appeal herein is dismissed.

UNITED STATES CIRCUIT JUDGE

Order of the District Court, N. D. of California Denying Application For Exten ion of Time to File Notice of Appeal

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The application for extension of time to file notice of appeal in the above entitled matter is DENIED.

Dated: October 20, 1972

ALFONSO J. ZIRPOLI

United States District Judge

Letter By Appellee's Counsel WAiving Right to File an Answering Brief (and Waiving Notice of Appeal as to Timeliness)

March 14, 1973 letter to Clerk 9th C. A.

" Appellee therefore declines to file an answering brief."

Very truly yours,

ANDERSON & ANDERSON

CERTIFICATE OF SERVICE BY MAIL

State of Conn)
County of Hartford) ss

I, STANLEY V. TUCKER, do hereby state that I have on this 30 th day of May 1973 served three copies of the Within Petition For Certiorari in Tucker v Neal, on the Respondent by mailing postage prepaid first class and by depositing in the U. S. mail box at Hartford this date addressed as follows:

Robert R. Anderson, Esq
621 E. Main
Santa Paula, California 93060

by_____
STANLEY V. TUCKER

FILE COPY

Supreme Court, U. S.
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IN THE

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October Term 1972

No. 72-1611

STANLEY V. TUCKER,

Petitioner,

-vs-

JEAN NEAL,

Respondent.

BRIEF IN OPPOSITION
** TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT **

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93060

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9 Moore's Federal Practice
¶ 110.14[1], p 197 6

QUESTION PRESENTED

Whether the court of appeals had jurisdiction to review an order of the district court denying an application filed 66 days after entry of judgment seeking an extension of time to appeal from the judgment.

STATEMENT OF THE CASE

(This statement is deemed necessary to correct inaccuracies and omissions, indeed misrepresentations, in the statement of the other side. Supreme Court Rule 40.3.

(References to the petition here and in the ARGUMENT to follow will be indicated parenthetically by "P" and the applicable page numbers.)

-0-

Summary judgment in favor of respondent was entered in the District Court for the Northern District of California on July 21, 1972. (P 7)

Sixty-six days later (September 25) the district court received petitioner's application, on grounds of alleged excusable neglect, for an extension of time to appeal from the judgment,

together with a notice of appeal to be filed if leave were granted. (Petitioner had mailed the notice and application on September 13, but sent them in error to the Central District of California rather than the Northern District. They were returned to him, and he remailed them to the right court. [P 9])

The district court denied the application on October 20, and on November 3 petitioner appealed (to quote his notice of appeal) from "the order made and/or entered herein on or about October 20, 1972 denying Defendant's Application For Extension of Time to file notice of Appeal." (P A 1)

On March 27, 1973, the Court of Appeals for the Ninth Circuit dismissed the appeal for lack of jurisdiction. (P A 1)

Petitioner now seeks a writ of certiorari to review that dismissal.

ARGUMENT

I

Petitioner suffered the irreversible loss of his right to appeal from the judgment of the district court by lapse of time. His petition obscures the true simplicity of the case by ignoring the fact that his appeal to the Ninth Circuit Court of Appeals was not from the judgment, but from an order of the district court made three months afterward, denying him his untimely request to appeal late. Thus, there has been no appeal from the judgment and, distinguishing the extraordinary powers of this Court in a proper case, there never will be. So the case comes here not on its merits, but on an issue of subsequent jurisdiction. Most of the petition is a debate of anterior matters, and is quite beside the point.

II

For present purposes, then, the case begins with the summary judgment of July 21, 1972. Petitioner neglected to appeal within 30 days thereafter, and the right was lost. FRAppP, Rule 3(a) and 4(a). Thirty days after that, the privilege of discretionary appeal in instances of excusable neglect was likewise gone. Id. Thereupon, no appeal having been taken or sought by documents on file with the court, the judgment became final. It was not until 6 days later---i.e., 66 days from entry of judgment---that petitioner's notice and application for leave to file a late appeal were received by the court. On October 20 the application was denied by the court, not in the exercise of discretion, but in observance of a clear jurisdictional limitation: It was powerless to grant the extension of time. It was from that order that petitioner

appealed, and the appeal was dismissed.

Neither court could have acted otherwise. The appeal concerned only appealability, a matter foreclosed by law on the 60th day after judgment. Thus, the order of the district court was effectively unappealable, for appeal from a postjudgment order is precluded insofar as it seeks to challenge a judgment already final by lapse of time. Leober vs Schroeder (1893), 149 US 580, 13 S Ct 934, 37 L ed 856; see 9 Moore's Federal Practice ¶ 110.14[1], p 197.

III

A discretionary appeal must be sought by notice of appeal and motion for its allowance filed with the court by the 60th day after judgment, otherwise the appeal will be dismissed. Alexander vs Sacha (9th Cir 1971), 439 F2d 743;

see also, Torockio vs Chamberlain Mfg. Co. (3d Cir 1972), 456 F2d 1084, 1087; Pasquale vs Finch (1st 1969), 418 F2d 627, 629; Reed vs Michigan (6th Cir 1968), 398 F2d 800, 801; Evans vs Jones (4th Cir 1966), 366 F2d 772, 773. The "filing" requirement calls for timely delivery into the hands of the clerk, and nothing less will do. Casalduc vs. Diaz (Gonzalez) (1st Cir 1941), 117 F2d 915. In Torockio, supra, 456 F2d at 1086 (fn omitted), the court said: "We note that unlike most other time limits prescribed by the Federal Rules, which turn on service, timeliness of a notice of appeal turns on filing."

Petitioner tries to skirt the issue by declaring that on September 13, 1972, he "filed by mail" his notice of appeal. (P 9) He contends that his mailing of the papers within 60 days after judgment

(September 13) was sufficient; that the papers should have been deemed timely filed albeit in the wrong court, which he says is good enough, citing Yanow vs Weyerhaeuser S.S. Co. (9th Cir 1959), 274 F2d 274; and that the failure of the papers to reach the proper court in time was the result of the "inadvertence, excusable neglect, mishandling of Los Angeles District Clerk" (sic). (P 9-10)

But mailing is not filing: the latter is an event peculiar to the court house, and does not occur at the sender's mail-drop. Allen vs Schnuckle (9th Cir 1958), 253 F2d 195. In Evans vs Jones, supra, 366 F2d at 772, the court disregarded an averment that notice had been mailed in time to meet a Monday deadline, and held instead that the notice was filed when received by the court on Tuesday.

Petitioner is likewise mistaken in his assertion that transmitting the papers to the wrong court, as he did, must be overlooked. The cases so saying uphold the filing in the appellate court of papers meant for the trial court, or vice versa, but only as between courts in vertical relation. See, e.g., Jordan vs U. S. District Court (1953), 98 US App DC 160, 233 F2d 362, 365; see also, Federal Deposit Insurance Corp. vs Congregation Poiley Tzedeck (2d Cir 1946), 159 F2d 163, 166. Petitioner, however, sent his papers to the wrong district, where the case was a stranger to the court. They were thereupon returned to him, and his present assignment of blame to the clerk of the Central District is to be understood only as human temperament, not as the law.

"So far as we can find, there

has in modern times been no disposition to relax the strictness of this requirement that something must be done in the proper court to indicate an intent to review. * * * [I]f the notice of appeal is not filed with the district court within the proper time, the right is irretrievably lost * * *."
United Drug Co. vs Helvering (2d Cir 1940), 108 F2d 637, 638-639.

Petitioner's purported appeal from the order of October 20, 1972, could not retrieve the irretrievable. Nothing viable reached the court of appeals. Confronted only with an unalterable ruling from below, the court was manifestly without jurisdiction.

IV

That is all there is to the case,

and it demonstrates that the court of appeals had no alternative but to dismiss petitioner's appeal. Apparently sensing this at last, petitioner has invented a different case for presentation in his petition to this Court. Thus, he says he made a motion under Rule 60(b), FRCivP, which he complains was never ruled upon. He says it over and again: "Where Appellant timely filed a Motion under Rule 60b and where the Ninth C. A. granted a motion to dismiss without ruling on Appellant's Rule 60B motion * * *" (sic). (P 2) "This case involves Rule 60b FRCP and the denial of due process and equal protection by failure to rule on Appellant's Rule 60b motion." (P 4) "Appellant filed a Rule 60b motion based on mishandling of his notice of appeal * * *." (P 5) " * * * [W]ithout ruling on Appellant's Rule 60B. motion * * *" (sic). (Ibid.)

"WITHOUT RULING on Appellant's Rule 60b motion * * *" (sic). (P 6)

Respondent is unable to find any such motion in the case. A motion under Rule 60(b), FRCivP, is addressed to the district court for relief under certain circumstances from a judgment, order or proceeding. No motion citing that rule appears in the record. Petitioner's brief to the court of appeal, covering more than 70 pages of argument, tables and appendices, makes no mention of Rule 60(b) anywhere. On June 11, 1973, the writer directed a letter to petitioner for clarification of the matter, but has received no reply. There seems never to have been such a motion, yet petitioner would have this Court believe it was made and ignored.

Petitioner is chargeable with other misrepresentations whose natural effect

is to becloud the case and prolong it. Thus, No. 4 of petitioner's "Questions Presented" recites that he had "timely prepared and filed an Application Of Extension of Time To File Notice of Appeal * * *." (P 2) The statement is contrary to fact and argumentative at best, out of place in a statement of issues.

Petitioner alleges that his motion for enlargement of time to appeal "was timely since Appellant had until October 19, 1972 to obtain an order to extend time." (P 9) In truth he had only to September 19, 1972.

Finally, petitioner claims that respondent waived timely notice of appeal. (P 11-12) He presumes to base the argument on a letter from the writer to the clerk of the court of appeals, from which petitioner quotes out of

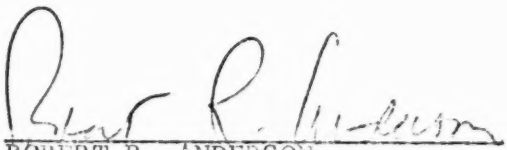
context a portion of a sentence by which respondent, as appellee, declined to file an answering brief. (P A 2) In the part of the letter omitted by petitioner, the clerk was informed that respondent had elected, in lieu of a brief, to submit the appeal on her pending motion to dismiss ---a motion which asserted, and by no means waived, petitioner's failure to appeal in time.

Conclusion

The case is routine, wholly without special or important reasons for granting certiorari. The judgment of dismissal in the court of appeals was in harmony with all pertinent decisions of this Court and of the courts of appeals, and did not in any way depart, nor sanction a departure, from the accepted and usual course of judicial proceedings. The

propriety of the ruling below is unquestionable, and the case is unworthy of the further time and attention of this Court.

WHEREFORE, respondent respectfully requests that the petition herein for a writ of certiorari to the Ninth Circuit Court of Appeals be denied.



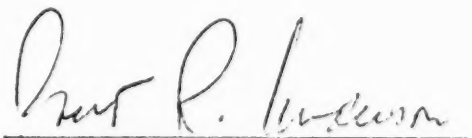
ROBERT R. ANDERSON

Attorney for Respondent
621 East Main Street
P. O. Box 671
Santa Paula, California 93060

CERTIFICATE OF SERVICE

I, ROBERT R. ANDERSON, attorney for respondent in the within-entitled proceeding, hereby certify that I served the attached BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI upon petitioner on June 29, 1973, by depositing three (3) true copies thereof in the United States mail at Santa Paula, California, postpaid, addressed to petitioner as follows:

STANLEY V. TUCKER
963 Capitol Avenue
Hartford, Connecticut 06106



ROBERT R. ANDERSON